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Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. A 264

JOHN E. KALIN, Petitioner

v.

N. E. YOUNGBLOOD, ET. AL.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

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IN THE

SUPREME COURT OF THE UNITED STATES

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No. A 264

JOHN E. KALIN, Petitioner,

v.

N. E. YOUNGBLOOD, ET. AL.,

Respondents.

Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California, Second Appellate District.

Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeal of the State of California, Second Appellate District, entered on May 26, 1976.

OPINION BELOW

The memorandum opinion of the 2nd District Court of Appeal of the State of California, which is not to be published anywhere in the official reports, is appended hereto, infra, at page 1. A copy of the notice denying petition for hearing

in the California Supreme Court is appended hereto, infra, at page 11.

JURISDICTION

The judgment of the 2nd District Court of Appeal of the State of California was entered on May 26, 1976. The petition for rehearing was denied on June 14, 1976. The petition for a hearing in the California Supreme Court was denied on July 21, 1976. An extension of time within which to petition for a writ of certiorari up to an including December 1, 1976, was ordered on September 30, 1976. Jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3).

QUESTIONS PRESENTED

Introduction: Petitioner in propria persona filed an attorney malpractice and breach of contract lawsuit against his three prior and successive attorneys who represented him in a civil action for defamation of his professional reputation after their individual and successive legal contributions resulted in petitioner's case being dismissed for failure to prove any cause of action. The first attorney, who wrote the defective complaint, which went to trial on its merits, was dismissed by the Superior Court, County of Los Angeles. The Court below affirmed the dismissal with the statement that any malpractice or negligence could have been cured by subsequent counsel.

The remaining two attorneys went to trial as joint tortfeasors.

In the interim, petitioner filed to have the judgment in the lost case vacated pursuant to California law which he discovered during his research. Petitioner was ordered by the Superior Court, County of Los Angeles, to post security pursuant to California Code of Civil Procedure section 391 (b) (2) [appended herein, pg. 12] and was further defamed as a vexatious litigant pursuant to the above cited statute when it was obvious that petitioner was not subject to the above cited statute and that newly named defendants could not invoke the requirements of the above mentioned statute. Even the first and third attorneys cited above "jumped on the bandwagon" and filed against petitioner for security pursuant to the above cited statute when petitioner's new attorneys refiled his complaint to vacate judgment and incredibly it was granted in gross violation of petitioner's fundamental civil rights and in a conspiracy to obstruct justice.

Continuing, petitioner started his malpractice lawsuit in propria persona with a jury and during the opening statement to the jury he learned that his economic resources were no longer available to him. This resulted in his learning that the trial judge indicated to the judge assigning courtrooms that the case couldn't be heard without a jury based upon a personal acquaintance with defendants as attorneys. The trial court then declared the trial a non-jury trial and disqualified itself. No proper time was given for petitioner to seek any means to maintain a jury trial. His case was reassigned.

Upon reassignment petitioner encountered the concepts he recites in his appeal to the Court

below, a brief which he makes part of this petition, with all concepts enveloped in an open atmosphere of raw hostitilty to mask the ability of and to prevent petitioner from presenting sufficient evidence to invoke res ipsa loquitur in an attorney malpractice lawsuit.

Petitioner's physical condition became highly aggravated with the assault upon him both by the trial court and opposing counsel and after multiple appeals to the trial court regarding his physical health, he was forced to his bed with prescribed medication and the trial court was so advised. At which time the trial court filled the record with statements attributed to petitioner and his wife which are repudiated and rejected. The trial court then "deposited" an order to show cause with petitioner's wife which was given to petitioner when he awakened late that afternoon. The order required either petitioner's presence or the presence of his medical doctor - an affidavit was not acceptable. Petitioner being ill and unable to appear and unable to even make arrangements for his medical doctor to appear upon such short and burdensome notice, the trial court dismissed petitioner's case for abandonment with prejudice.

The Court below affirmed the trial court's order as cited in the written opinion attached herein. It further deemed the "collateral matters" brought up in petitioner's appeal as not being properly before the court.

The questions presented are:

1. Did the Court below err in holding that the trial court was correct in dismissing plaintiff/petitioner's lawsuit for abandonment when petitioner was ill, and had notified the court, and the

court order in turn demanded petitioner's presence, or his medical doctor's presence, and that an affidavit would not be accepted in such a short time period? And in so holding, have petitioner's rights under due process and equal rights (Amendments 5 and 14) been violated?

2. In so holding, did the Court below render a decision in conflict with the fundamental federal definition and interpretation of the word abandonment and the multiple decisions of this Court regarding the nature and requirements of legal abandonment?

3. In holding that the trial court evidenced no judicial misconduct, did the Court below not only hold itself in conflict with other court's of appeal in the State of California, but violate petitioner's rights under due process and equal rights (Amendments 5 and 14)?

4. Was plaintiff/petitioner denied due process rights under the 5th and 14th Amendments in that, as a lay person untrained in law, the Court below held that the so-called "collateral matters" set forth in petitioner's brief need not be considered as not properly before the Court below?

5. Due to the nature of the case (attorney malpractice) and due to the prior conversation between the first trial judge and the judge responsible for assignment of court rooms, have petitioner's rights to a jury trial been violated when the

Court below refused to consider the matter on appeal as a "collateral matter" not properly brought to them for consideration?

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V

"No person .. shall .. be deprived of life, liberty, or property without due process of law."

Amendment XIV

"....nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

STATE STATUTES

The pertinent parts of California Codes of Civil Procedure: 581, subdivisions 3 and 4, and section 391 (b) (2) are set forth in the Appendix starting at page 12.

STATEMENT OF THE CASE

1. Proceedings In The Trial Court: During petitioner's opening statement to the jury he found that the economic resources he relied upon to pay the jury fees were no longer available to him due to the economic crisis existing in 1975. He immediately proceeded to notify the trial court by motion to have the county pay the jury fees pursuant to California law. Abruptly and without any time to properly make any other arrangements, petitioner found the jury trial was declared a non-jury trial and the trial court declared the trial a mistrial while informing parties that during a prior discussion with the Assistant Presiding Judge of the Superior Court of the County of Los Angeles that the court was acquainted with the defendants in their attorney capacity and hence could not preside over a trial without a jury.

Petitioner's case was reassigned. The trial court's reaction to petitioner's status as plaintiff in propria persona in an attorney malpractice action was quickly demonstrated as outlined in his "APPELLANT'S OPENING BRIEF", [certified as part of the record to this Court] pages V-1 and V-2 (after page 25.).

Petitioner in opening brief on page 10 et. seq. states what the standards of judicial conduct in general include. On page 13 et. seq. petitioner defines the legal requirements of judicial misconduct as determined by law and the cannons of judicial ethics of the American Bar Association. Coupled with this, on page 18 et. seq. petitioner states the applicable and established laws

regarding attorney malpractice which are in opposition to those laws expressed by the trial court.

Petitioner on page V-3 through V-82 analyzes the trial court's behavior in contrast to judicial misconduct and the controlling laws regarding attorney malpractice in the state of California.

Petitioner on page V-83 through V-88 summarizes the preceeding pages in support of his appeal to the Court below.

Petitioner found that the trial court's behavior fitted about every act defined by law of judicial misconduct. Additionally, he found that the trial judge was unaware of the controlling law regarding attorney malpractice in the state of California. And further, coupled with this halting concept, petitioner found the trial judge attempting to restrict petitioner's case by curtailing petitioner's attempts to invoke res ipsa loquitur in an attorney malpractice case.

Petitioner's illness for which he asks damages in his lawsuit became quite aggravated. Consultation with his medical doctor was mandated by the trial court's conduct and the multiple times that the court accused petitioner, as plaintiff in propria persona, of feigning illness.

On March 18, 1975, late in the evening in realization of his physical condition at 7:51 p.m. (PST) [telegrams are stated in Eastern Standard Time], petitioner sent the following telegram for delivery to the court:

"Plaintiff moves for mistrial based on misconduct of court and opposing counsels. *

* Opposing counsel actually threw a book at plaintiff.

Supported by Courts closing comments on March 18 and previous conduct and statements of court and said counsels resulting in total inability to attend and prosecute trial under such circumstances. Declaration to follow."

On March 19, 1975, the court clerk telephoned the home of petitioner at 10:15 a.m. Petitioner's wife answered the call at which time she was advised by the clerk that the court wanted to discuss the essence of petitioner's motion. The clerk also inquired if petitioner could be in court at 1:30 p.m. for the court to consider the motion at which time petitioner's wife informed the clerk that petitioner was ill and could not be disturbed and that he would not be in court that afternoon. At 10:30 a.m. - fifteen minutes later - another call was received by petitioner's wife from the clerk stating that he was quoting the judge that if petitioner does not appear at 1:30 p.m. today the court will grant judgment in favor of defendants for abandonment of the case and that no mistrial will be granted. At 1:55 p.m. petitioner's wife received a third call from the clerk who advised her that the judge has given final notice and petitioner is ordered to appear in court tomorrow at 9:30 a.m. to show cause why the case should not be dismissed. Further that if petitioner is unable to appear due to illness, a physician should appear to report in this regard [the actual order stated an affidavit would not be accepted]. Late in the afternoon of the same day petitioner's wife answered the doorbell at which time a uniformed officer handed her a document and stated: 'Please give this to Mr. Kalin". Petitioner's wife responded: "Yes, I

will". No further exchanges were made.

Approximately at 5:30 p.m. petitioner was given the information above when he awakened from the effects of his medication. Petitioner immediately sent the following telegram at 5:39 pm PST to the court:

"RE KALIN VERSUS YOUNGBLOOD. REPEAT CONTENTS PREVIOUS TELEGRAM. COURT ORDER MARCH 19, 1975 APPEARANCES TOTALLY IMPOSSIBLE. NO ABANDONMENT AND NO FAILURE TO APPEAR."

The court during the absence of the petitioner filled the record with a recital that petitioner rejects and repudiates. Petitioner's wife, as the record applied to her, also rejected and repudiated the recital of the trial court. Among other things, the court confused a medical doctor with a doctor in philosophy and rendered that part of the record into the area of speculation.

2. Proceedings In The Appellate Court:

A. The establishment of the federal question: As contained in "Appellant's Opening Brief" [hereinafter AOB], the establishment of the federal question is indicated as follows and in the only language known to the petitioner as appellant in propria persona:

(1) Page 15, under the subheading of Partiality, Prejudging, and Prejudice, petitioner raises the concept of a denial of due process in the rejection of a proper offer of proof and determination of an issue without a fair hearing.

(2) Page V-2. At the top of the page, petitioner complains that the trial court's conduct

of the trial at the convenience of the attorneys whether they be opposing counsel, defendant, or witness, was essentially lacking in the requirements of a fair trial and that the "some-time-thing" characteristic of the trial was a denial of due process.

(3) Midway down the page, petitioner raises the question: "... and what are the implications regarding the rights of the appellant of the discussion between the judges.[?]" Petitioner has had to raise the difficult question of judicial misconduct in an attorney malpractice case being prosecuted by a non-attorney, untrained in law. The rights of fair and equal treatment and equal protection under the law appear to be violated when the judge assigning court rooms has had prior discussions to his assigning the case.

(4) Page V-19. Midway down the page in petitioner's attempts to provide the appellate court with an example of the trial court's posture and manner when he rejects the trial court's comments to him when petitioner is asked to rationalize and explain the joint efforts of the trial court along with the opposing attorney making a motion to quash who determined the dates in question. Petitioner states: "When insult is added to this incredulous behavior by the court, appellant submits that not only is due process being denied to him, but he is being victimized by the court."

(5) Page V-37. Midway down the page, citing the pages in the trial transcript, petitioner states: "Here is a classic illustration, obvious by its limited verbal exchange, of the court's prejudicial and outrageous attitude towards the appellant

resulting in an impossibility to pursue the case with any intelligence and consequently denying the appellant a fair hearing and as such depriving the appellant of due process. On line 7, the court clearly did not state what it attempts to assert after the fact." Petitioner would submit that here when the trial transcript is read in relationship to the decision of the court below, his case and his position can be stated in brief form. The level of achievement that petitioner was subjected to, and as a result the deprivation of his basic constitutional rights, can be illustrated with brevity and clarity of comprehension.

(6) Page V-44. Last section referring to the trial transcript wherein the petitioner states: "Appellant previously had the impression that due process was denied him and that this trial was an exercise in trying to second guess the appellate court in lieu of a trial on the merits of the case based on a proper and literate interpretation of the statutes...."

(7) Page V-66. Midway down the page where in discussing the fact that opposing counsel actually threw a heavy book at the appellant, petitioner states: "Appellant submits that it is a deprivation of due process when the court's conduct is such that it prompts opposing counsel to start throwing books at the appellant."

(8) Page V-80. After the quotation of the trial court wherein it stated: "And the court is well aware of the feelings of the courts of this state as to pro pers.", petitioner states: "The court is obviously biased against those who represent themselves and to the point that due process is denied

the appellant and obviously those other individuals who represent themselves before this particular court."

As contained in the PETITION FOR REHEARING, certified as part of the record to this Court, and again, in the only language known to the petitioner as appellant in propria persona:

(1) Page 3., Subsection E. "Plaintiff's allegation is clearly stated in his Opening Brief, page 30, and the only denial he asserts is one equated with the denial of due process."

(2) Page 8., wherein Petitioner states: "The written opinion just plays with words, and as such it is not in consonance with established law." Petitioner has used federal cases to support his position of no abandonment.

(3) Page 11., regarding petitioner's wife's declaration wherein he states: "Again, simple justice and fairness appear to mandate it[s] inclusion in this appeal." Here petitioner states the basic elements of due process.

(4) Page 13, upper part wherein petitioner states: "Appellant submits that this court on its own authority, which it does possess, recall the remititur and bring the written opinion in line with the law as it is simply expressed and in line with the preservation of appellant's civil rights." This section refers to the footnote cases on page 4 of the written opinion of the Court below, contained herein as required in the appendix, wherein the Court below affirmed an order for petitioner to pay security to vacate the judgment in the underlying case and further declared petitioner a vexatious litigant all in direct violation of the statute. Even the 1st and 3rd attorneys mentioned above

actually invoked the California statute and received an order from the court granting their improperly made motions.

B. As amply illustrated in petitioner's PETITION FOR HEARING, SUPREME COURT STATE OF CALIFORNIA, the appeal's court avoided the constitutional questions, derogated the appellant, incorporated a number of foundational errors not supportably by the record, simply declared without any references that the there was no judicial misconduct, refused to consider petitioner's wife's declaration, declared that the collateral matters were improperly before them and therefore not necessary of any recognition, and affirmed the lower court's orders.

3. Proceedings In The Supreme Court, State Of California:

A. The establishment of the federal question: As contained in petitioner's PETITION FOR HEARING in the language known to him at the time:

(1) Page 7. First sentence wherein petitioner states: "Absurdity and a deprivation of appellant's civil rights has reached new heights when appellant appealed to the 2nd District Court of Appeal who not only sustained the lower court's order for security, but compounded the absurdity and the above mentioned deprivation by numerous errors in the written opinion resulting in appellant now being in the unique position of forever being foreclosed from filing a complaint in propria persona without anyone and everyone being eligible for security.

(2) Page 18. The last sentence on the

page wherein petitioner discussing the misconduct of the trial court states: "Also, the total lack of any authorities or any support to the brief statement in the opinion invites the charge of partiality and protectionism at the expense of petitioner's right to due process."

(3) Page 21. Towards the bottom of the page under the heading of "Further Comment: In no other forum would such obvious and gross nonsense go unnoticed. The court's misconduct is in excess of its jurisdiction."

(4) Page 26. Lower than midway down the page wherein petitioner states: "The above [referring to the fact that the trial judge did not know the controlling law regarding attorney malpractice and attempted to misdirect petitioner's entire case] is an excellent example of petitioner being deprived of 'due process' by the improper influences of the judge."

(5) Page 30. and 31. Bottom of page wherein abandonment is defined in federal terms and citing the requirements of legal abandonment in federal terms.

(6) Page 34. Top of the page wherein petitioner states: "Performance of the court's demand mandates not only sufficient time but an economic level in order to be able to have a doctor present. As such plaintiff is being deprived of due process."

(7) Page 35. Although not stated directly, it is implicit in the recital under section IV. regarding the collateral matters allegedly not properly before the court below and that they should be included for the sake of simple justice.

(8) Although not stated directly, it is implicit in the recital under section V. that plaintiff's wife's declaration should have been considered in the appeal based on a sense of fairness as well as propriety.

(9) Page 37. Wherein it refers to the case discussed in the written opinion attached herein in the appendix where petitioner states: "Note should be taken of its lack of relationship to the statute requriements and to the total deprivation of petitioner's civil rights." And further down on the page wherein petitioner states: "It reduces the administration and system of justice to the clericalism which is inherently a deprivation of due process mandating bringing legal matters to an organization more responsible in its behavior and more cognizant of the true and only objectives of the administration of justice."

(10) Page 39. Last sentence of the summary wherein petitioner states: "As such, petitioner requests a reversal of the written opinion in its affirmance and the underlying court order of dismissal inasmuch as both are a denial of due process of law."

B. Petitioner submits that additionally throughout his briefs are inherent claims of violations of his basic constitutional rights, expressed not in formal terms, nor expressed by formal categories, but expressed in the contents of the subject matter stated.

C. The Supreme Court, State of California denied a hearing.

REASONS FOR GRANTING THE WRIT

This petition raises substantial and important questions regarding the administration of civil justice in the courts of the State of California. The Court below has sustained the validity of a state statute against a claim of repugnance to the federal Constitution and has rendered a decision in conflict with this Court. This petition is not only concerned with those individuals who represent themselves in litigation, but is appreciably concerned with those judges who do not subscribe to the statement of the trial judge who said: "And this court is well aware of the feelings of the courts of this state as to pro pers". As such, it is also concerned with whether judicial misconduct is still in existence.

1. In its approval of the trial court's dismissal, not only does the Court below make a travesty of the plain meaning of the word abandonment, but it places itself in conflict with the multiple decisions of this Court regarding the nature, definition, and requirements of abandonment.

This Court has clearly indicated the necessary elements that comprise abandonment. Proof of abandonment must be made by one asserting it by clear, unequivocal, and decisive evidence. Abandonment will not be presumed. Abandonment is largely a question of intent which in turn is a question of fact. An abandonment must be made to appear affirmately by the party relying thereon, and an intention to abandon will not ordinarily be presumed, especially if conduct of owner can be

explained consistently with continued claim. Citing Friedman v. U.S., 347 F. 2d 697, certiorari denied 86 S. Ct. 407; U.S. v. Robinson, 430 F. 2d 1141; and U.S. v. Minker, 312 F. 2d 632, certiorari denied 83 S. Ct. 952, 382 U.S. 953.

Further, this Court has applied to the above requirements, the concepts of involuntary absence and the rule of reasonable time as cited in Friedman, supra, and Page v. Shenandoan Life Ins. Co., 185 Va 919, 40 S.E., 2nd 922, 925.

It is more than noteworthy in reviewing the written opinion of the Court below that omission is made of that part of the trial court's order requiring either the presence of petitioner or his medical doctor and that an affidavit would not be acceptable. None of the requirements above have been met. Petitioner's wife's declaration rejects and renders worthless the assertions relied upon by the Court below. A man's absence when he is ill is normally considered involuntary. Reasonable time has not been applied. A fact is not established by those not competent to testify. It is not even reasonable on the surface to state that a man who pursues a difficult case of attorney malpractice for 5 years would simply abandon it during trial, and abandonment cannot be presumed by a man who spends an additional period of time researching the procedure to protect his continued claim by the preparation of this writ. Even the employment by petitioner of basic English in his rejection of the concept of abandonment is not sufficient for the Court below. According to the Court below, petitioner has achiev the only one-man boycott in the world and has done

so to his detriment. Words simply have no meaning with the Court below as illustrated in petitioner's briefs. Regarding petitioner's wife's declaration, petitioner submits that common deceny and the due process clause requirements that procedures established for resolution of private disputes be at least minimally just, fair, and rational [U.S. C.A. Const. Amend. 14 and Watson v. Branch County Bank, 380 F.Supp. 945.]. should prevail in place of the easy refusal to consider the declaration purportedly due to a procedural omission.

If the judgment of the Court below is permitted to stand, no individual representing himself in an attorney malpractice would stand a chance of success or even of presenting his case. As such, this writ should be granted.

2. The Court below is in conflict with the requirements of the due process and equal protection of the law as provided by the 5th and 14th Amendments of the Constitution.

Amendment V states in pertinent part: "No person ... shall... be deprived of life, liberty, or property without due process of law."

Admendment XIV states in pertinent part: "... nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The concepts of equal protection and due process are not mutually exclusive, but rather

they both stem from our American ideal of fairness. U.S.C.A. Const. Amends. 5 & 14 and Miller v. Laird, 349 F. Supp 1034; Lee v. Habib, 424 F. 2d 891, 137 U.S. App. D.C. 403. Further, "Just and fair trial by unbiased, unprejudiced, and impartial tribunal is one of the great American constitutional principles, and there can be no due process or equal protection unless that principle remains inviolate." Billingsley v. Clayton, 359 F. 2d 13, certiorari denied 87 S. Ct. 92, 385 U.S. 841.

The Court below supports a trial court that openly states: "And the court is well aware of the feelings of the courts of this state as to pro pers". Petitioner submits, what more need be said regarding bias, prejudice, and partiality? Every "pro per" in the state of California will have his rights violated under the above mentioned amendments when confronted with the above mentioned courts. This writ should be granted to afford protection to these individuals that their rights will be executed as well as affording protection to those judges in the State of California who do not conduct their courts in a manner that would even permit subscription to the above quotation from the trial court. Further, is there any wonder why the Court below did not find any judicial misconduct? Again, this writ should be granted to afford protection to individuals who represent themselves and are subjected to judicial misconduct as well as to afford protection to those judges whose behavior would never fit the description of judicial misconduct. And still further in conjunction with the above, is there any wonder

why the Court below elected not to consider the so-called collateral matters? As this Court cited in Burton v. Wilmington Parking Authority, 81 S. Ct. 856, 365 U.S. 715: "No state may effectively abdicate its responsibilities under Fourteenth Amendment by either ignoring them or by merely failing to discharge them, whatever the motive may be." It appears that the Court below has and as such this writ should be granted. It is noteworthy that part of the so-called collateral matters consist of files in their keeping and were indicated in the proper notice of the clerk to prepare the transcript and yet by some ostensible procedural error they elect not to consider them. This action is in conflict with this Court's decision in Lisco. v Love , 219 F. Supp. 922, reversed 84 S. Ct 1459, 377 U.S., where it stated: "The criteria of equal protection are arbitrariness, discrimination, and lack of rationality." It further raises the question to what extent must a man representing himself untrained in law go in order to pursue a case with intelligence and not fall victim to the situation where proceduralism is above substance? As cited above in Watson, the due process clause requires that procedures established for the resolution of private disputes be at least minimally just, fair, and rational, further support for the granting of this writ is offered, otherwise, what chance for success would a man representing himself have. In summary, it is neither fair, nor just, nor rationale to ignore a substantial part of petitioner's appeal when the documents required are in the possession of the appeal court.

3. Petitioner's rights to due process and a fair trial wherein he can invoke the concept of res ipsa loquitur in an attorney malpractice case are seriously jeopardized by the diversions created by the trial court and sustained by the Court below.

As stated in petitioner's PETITION FOR HEARING, SUPREME COURT, STATE OF CALIFORNIA, under the Summary, page 38:

"The trial court by creating a procedural morass hoped to bog down this case and bog it down for good. Petitioner as plaintiff was forced to listen to utterances that had no basis in fact and law during the trial and was forced to listen in unbelieving silence. The trial court hoped with its documents and speculations chanting versions of its mysteries to relieve itself of the reality facing it and that is primarily a 'pro per' attempting to invoke res ipsa loquitur in an attorney malpractice case. The written opinion is nothing more than at attempt to create another procedural diversion. The written opinion reflects a position that is unmerited. It is an overhasty and unsupported judicial action. It is obvious that the defendants, the trial court, and the appeal court ran into trouble when it faced the necessity of translating the sound and fury of their action into citeable law. Translation proving impossible; transmogrification was substituted. Simply stated this case illustrates a contrived conclusion that has no supporting facts. A continuance obviously is something that 'pro pers' are not entitled to as defendant-attorney-witnesses run throughout the courthouse tending to their daily chores while

their trial is a sometime thing since their own attorneys also have other legal affairs to attend to in the courthouse unrelated to petitioner's trial. In all, petitioner has been subjected to a questionable extravaganza spun from opinion without substratum in fact, logic, and law proving that there are none so blind as those who will not see ....."

This Court should note the hostility demonstrated against the petitioner as plaintiff in the trial court. Again, in the brief to the state supreme court, petitioner points out hostility in the opinion of the Court below. Both are unwarranted Both stem from petition's status as a "pro per" attempting to invoke res ipsa loquitur in an attorney malpractice case; said concept never invoked to petitioner's knowledge in the state of California. Other professions are subjected to it. Only the legal profession appears to be free from its requirements. In the limited number of attorney malpractice cases it is difficult to conceive of a prosecuting attorney invoking this concept in the application of his client's rights. Petitioner submits that this writ should be granted in order to insure that citizens of this country are not deprived of due process and equal protection when their attorney's conduct warrants a lawsuit for malpractice or negligence.

4. Petitioner's rights to a jury trial are foundational in the federal constitution and are completely violated under the guise of proceduralism and the Court below has elected to view petitioner's plight under those "collateral matters"

not properly brought before it.

The economic crisis of 1975 has been a surprise to the nation and the world. It has affected people on all levels. And it has affected petitioner in trying to exercise his rights to a jury trial. His economic circumstances have been aggravated by the crisis of 1975. Expediency has never been a proper substitute for justice or a fair trial; especially in an attorney malpractice lawsuit when the finder of fact was once a member of the bar. Petitioner submits the writ should be granted to perserve the integrity of a citizen's right to a jury trial.

Further, petitioner would analogize that prejudice to the accuser is inherent in the circumstances and as such it is not necessary to even find identifiable prejudice in order to conclude that due process is wanting. Estes v. Texas, 381 U.S. 532 (1965).

5. Petitioner's punishment and respondents' awards are highly inordinate and in violation of Amendments 5 & 14.

This Court in Hobson v. Hansen, 269 F. Supp. 401, certiorari dismissed 89 S. Ct. 40, 393 U.S. 801 stated: "Government action which, without justification imposses unequal burdens or awards unequal benefits, is unconstitutional under equal protection doctrine." It is interesting to observe that during pre-trial discovery one respondent actually ignored the discovery laws of the State of California and went on his vacation.

His punishment was no greater than his attorneys having to do a little more paper work. The other respondent conducted no discovery in the nearly 5 years it took petitioner to prepare his case and attempted to do so in violation of California law within the 30 days prior to trial which is prohibited. His punishment? Nothing. These respondents have enjoyed a good thing for entirely too long. As such this writ should be granted. Aspects of this case are simply lacking in fairness.

6. The written opinion of the Court below has too many errors in its as outlined by petitioner in his petition to the Supreme Court of the State of California, certified as part of the record to this petition.

The written opinion of the Court below affects petitioner's economic existence. As such he is entitled to a document free from errors that reflect adversely upon the fundamental decision in that written opinion. The statistical possibilities of the three judges making the same errors are nil; hence, due process and equal protection as indicated above are sharply brought into focus. As such, this petition should be granted.

7. The opinion of the Court below leaves all citizens of this country defenseless against the malpractice and negligence of their attorneys.

As such, attorneys knowing this would enlarge these concepts in their own self interest. Further, as such the fiduciary relationship between

attorney and client would be rendered into the meaningless and to the detriment of the client. Petitioner in this case was forced to listen to the attorney representing petitioner's 3rd ex-attorney ask the attorney for the opposition in the underlying case if there was anything he could do to help him. Now, how confidential is the information given to petitioner's third ex-attorney? Alone, this reason would justify the granting of petitioner's writ.

8. Immediately, intermediately, and ultimately, the written opinion below jeopardizes the basic right of an individual in this country to represent himself in a court of law inasmuch as it removes the protection of language, logic, and law and renders the right of self representation into a meaningless exercise of a barren and empty right.

CONCLUSION

For the reasons aforesaid, it is respectfully prayed that this writ be granted.

Respectfully submitted,

JOHN E. KALIN,
Petitioner Pro Se
32735 Sea Gate Drive
Palos Verdes Peninsula,
California 90274

APPENDIX

NOT TO BE PUBLISHED IN
THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JOHN E. KALIN,

Plaintiff and Appellant,

v.

N. E. YOUNGBLOOD, GEORGE M. GOFFIN and CROWLEY AND GOFFIN, a law firm,

Defendants and Respondents.

2D CIV. NO. 47181
(Sup. Crt. No. SW C 16973)

COURT OF APPEAL-SECOND DIST.
FILED
MAY 27 1976
CLAY GOFFIN
Deputy Clerk

APPEAL from judgments of the Superior Court of Los Angeles County. Francis X. Marnell, Judge. Affirmed.

John E. Kalin, for Plaintiff and Appellant, in pro per.

Ervin M. Roeder, for Defendant and Respondent Youngblood.

Brill, Hunt, DeBuys & Burby, and Michael T. Fox, for Defendants and Respondents George M. Goffin and Crowley & Goffin.

Appellant-plaintiff John E. Kalin appeals from judgments of dismissal pursuant to Code of Civil Procedure section

581, subdivisions 3 and 4,[1/] rendered in favor of defendants N.E. Youngblood, George M. Goffin, and Crowley and Goffin, a law firm. We conclude the record supports the action of the trial court; therefore, we affirm the judgments.

The background of this case is as follows:

On March 27, 1967, appellant, as plaintiff, filed an action entitled Kalin v. Aerospace Corporation, No. SW C 10516, in the Los Angeles Superior Court (hereafter referred to as the underlying action). The first amended complaint in that action alleged that respondents Aerospace Corporation, James Benning, Vaugn Andrews, and William Drake, Jr., (employees of Aerospace) pursuant

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1/ Section 581, subdivisions 3 and 4 of the Code of Civil Procedure provide as follows:

"An action may be dismissed in the following cases:

. . . .

"3. Court. By the court, when either party fails to appear on the trial and the other party appears and asks for the dismissal, or when, after a demurrer to the complaint has been sustained, the plaintiff fails to amend it within the time allowed by the court, and the defendant moves for such dismissal.

"4. Court; with prejudice. By the court, with prejudice to the cause, when upon the trial and before the final submission of the case, the plaintiff abandons it."

to a conspiracy, defamed appellant on 18 separate occasions. Trial began November 17, 1969. At the conclusion of appellant's case, the trial court granted a motion pursuant to Code of Civil Procedure section 631.8. Judgment for the defendants was entered accordingly.

Representing plaintiff in action SW C 10516 were Jeremy Evans, who prepared and filed the first amended complaint; George M. Goffin, Evans' successor as plaintiff's counsel, who was involved in various pre-trial discovery proceedings; and N.E. Youngblood, Goffin's successor who was plaintiff's trial counsel.

On March 2, 1970, plaintiff commenced the instant action, alleging attorney malpractice against his three successive counsel in action SW C 10516. Evan's demurrer to the action was sustained without leave to amend and he was dismissed. On September 28, 1971, plaintiff's sixth amended complaint in this action was deemed served and filed; Goffin remained as a defendant under the "Second Cause of Action" for attorney malpractice, and Youngblood remained as a defendant under the Third and Fourth "Causes of Action" for attorney malpractice

and breach of contract.[2/]

2/

In addition to the instant action, on November 3, 1971, plaintiff in pro. per., filed an action (No. SW C 21056) against respondents Aerospace Corporation, Benning, Andrews, Drake, Robert S. Rubenstein (an employee of Aerospace), Youngblood, Goffin, Crowley, amd Evans, alleging essentially the same facts as those litigated in No. SW C 10516, plus additional purported acts of defamation, called in the complaint "invasions of privacy." This action was dismissed after failure of plaintiff to post costs, upon motion of defendants, as a "vexatious litigant." (Code Civ. Proc., § 391, et seq.) Plaintiff's appeal to this court was dismissed on motion of defendants.

On September 13, 1972, plaintiff filed another complaint (No. C 38701) against Aerospace and the four aforementioned named employees, plus Chase, Rotchford, Drukker and Bogust (Aerospace counsel in Kalin's underlying action), and plaintiff's three aforementioned counsel. This complaint, prepared by counsel, purported to allege a cause of action in equity to set aside for extrinsic fraud the judgment entered in No. SW C 10561. A "conspiracy" to defeat plaintiff's claim was alleged. Subsequent to the filing, plaintiff substituted himself in pro. per. This complaint was dismissed as to certain parties when plaintiff failed to post costs as a "vexatious litigant." A plea of abatement was also held valid as to a "First amended complaint" filed by plaintiff subsequent to the dismissal of the original complaint. On appeal, this court found plaintiff's First amended complaint to be "based upon the same factual situation as is pleaded by appellant in action No. SW C 16973." (Kalin v. Aerospace, 2d Civ. No. 42865, p. 9.)

On Monday, March 3, 1975, the case was called for trial and jury selection commenced.

Defendants have pointed to certain irregularities in the proceedings which would bring into play the five year lack of prosecution statute.(Code of Civ. Proc., § 583 (b).) Specifically, the five year period ended on Sunday, March 2; hence, the last day of the period was extended to Monday March 3. On that day plaintiff requested, and the court permitted him, to be sworn, take the stand and give his name and address. No jury panel had been sworn at this time. On March 6, after objections to this procedure by defendants had been overruled, jury selection began. Such selection was never completed, since plaintiff, on March 10, moved that jury fees be paid by the county pursuant to Code of Civil Procedure section 631.1. Plaintiff's motion was denied and a mistrial declared. The action was then transferred for trial before the court in Department 17, the Honorable Francis X. Marnell presiding.

Defendants contend plaintiff's actions on March 3 did not prevent the running of Code of Civil Procedure section 583 (b). Plaintiff contends the court's denial of his motion pursuant to Code of Civil Procedure section

631.1 is error. Although there is some merit in defendants' contention, it is not seriously urged as a ground for upholding the trial court's dismissal; accordingly, we do not decide this issue. We find no merit in plaintiff's contention.

A major portion of plaintiff's "brief" consists of a line by line reading of the reporter's transcript, in which plaintiff finds various examples of judicial misconduct on the part of Judge Marnell. We have thoroughly reviewed the trial transcript, and we find no such misconduct.

Basically, plaintiff's criticisms result from Judge Marnell's rulings in regards to the relevancy of certain evidence. Plaintiff's "case" consisted of the examination of the attorneys who represented him in the original action against Aerospace. Considerable time was spent in questioning Evans, who was not a party to the action, regarding his sources of information in drafting the first amended complaint and his relationship with the plaintiff. The court asked that plaintiff make an offer of proof as to the relevancy of this information, particularly in light of the fact that plaintiff had made no showing that Evans had contacted the defendants at any relevant time. Plaintiff refused to comply with this

request, accusing the court of harassment.

Similarly, the court undertook to determine the relevancy of certain testimony by defendant Goffin. For example, plaintiff, in discovery, obtained certain documents from defendant Goffin. Apparently some of these documents had been obtained by Goffin from defendant Youngblood. Plaintiff attempted to elicit testimony to establish that since some documents had passed from Youngblood to Goffin an inference arose that evidence essential to plaintiff's case was destroyed. Under questioning by the court plaintiff was unable to elucidate why such an inference should arise nor could he make an offer of proof as to how testimony by Goffin could raise such inference.

Plaintiff's examination continued along this line. At no time did plaintiff elicit testimony that would tend to establish any malpractice upon the part of defendants.

During the trial, the court instructed plaintiff at various times on the proper method of questioning witnesses, placing interrogatories in evidence, admitting documents under the business records exception, and making an offer of proof. After some six court days, during which little relevant evidence had been produced, the court sought to direct the order of proof. At the close of the

March 18, 1975 court day, Judge Marnell told plaintiff he had "one more hour to bring out relevant evidence" by examining defendants. If no relevant evidence was forthcoming, he would order plaintiff "to take the stand and give us your theory of the case and point out in what way you think the defendants did not perform their duties as attorneys at law. . . " Plaintiff stated to the court that he would not testify.

The next morning, March 19, plaintiff sent to "Judge Francis Mandell"[sic] a telegram stating:

"PLAINTIFF MOVES FOR MISTRIAL BASED MISCONDUCT OF COURT AND OPPOSING COUNSELS. SUPPORTED BY COURTS CLOSING COMMENTS MARCH 18 AND PREVIOUS CONDUCT A D STATEMENTS OF COURT AND SAID COUNSELS RESULTING IN TOTAL INABILITY TO ATTEND AND PROSECUTE TRIAL UNDER SUCH CIRCUMSTANCES. DECLARATION TO FOLLOW
JOHN E KALIN"

That morning, the court clerk called plaintiff's home. Plaintiff refused to come to the phone, but his wife told the clerk "He cannot continue." Plaintiff's wife was instructed that should plaintiff refuse to be present at the court's afternoon session, the matter would be dismissed with prejudice. The judge stated: " . . . I'm going to indicate to the counsel, for the benefit of the record, that if he isn't here at 1:30, I intend to have an order served upon

him by the Sheriff at his home this afternoon, demanding that he be here at 9:30 tomorrow morning or a doctor be present to explain his absence if in fact he is unable to appear because of any medical problems. . . . "

Plaintiff did not appear that afternoon. A formal order was prepared and served, directing plaintiff to appear at 9:30 a.m., March 20, and "show cause why your action should not be dismissed under C.C.P. § 581, subsections (3) and (4), to wit: abandonment of your Complaint and failure to appear on trial."

On March 20, the court received a second telegram from plaintiff. This telegram read:

"RE KALIN VERSUS YOUNGBLOOD REPEAT CONTENTS PREVIOUS TELEGRAM. COURT ORDER MARCH 19 1975 APPEARANCES TOTALLY IMPOSSIBLE. NO ABANDONMENT AND NO FAILURE TO APPEAR.
JOHN E KALIN"

No showing of medical illness was made. Pursuant to the March 20 order the case was dismissed with prejudice.

As is made apparent by this foregoing lengthy recitation of facts, the trial court's action in dismissing the case was fully justified. (See Taecher v. Parker, 34 Cal.App.2d 143.) Despite the characterization in the second telegram that there was "no abandonment and no failure to appear" plaintiff's boycott of the proceedings is a clear refusal to participate in the case. This

action and not plaintiff's characterization of such, clearly brings him within the purview of Code of Civil Procedure section 581, subsections 3 and 4.

Plaintiff has attached to his opening brief his wife's declaration that "at all times mentioned above, Mr. Kalin was ill and asleep and unaware of the above mentioned happenings, and was at home." This declaration was never properly made a part of the record before the lower court and we need not consider it on appeal.

As stated previously, we find no substance in plaintiff's claims of judicial misconduct.

The collateral matters set forth in plaintiff's brief are not properly before this court.

The judgments appealed from are affirmed.

POTTER, J.

We concur:

FORD, P.J.

ALLPORT, J.

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JUL 13 1976

I have this day filed Order

HEARING DENIED

In re: 2 Civ. No. 47181
Kalin

vs.
Youngblood, et al.

Respectfully,

G. E. BISHEL
Clerk

40748-577 3-76 SM OSP

STATE STATUTES INVOLVED:

California Code of Civil Procedure, section 581, subdivisions 3 and 4:

"An action may be dismissed in the following cases: .....

3. Court. By the court, when either party fails to appear on the trial and the other party appears and asks for a dismissal, or when, after a demurrer to the complaint has been sustained, the plaintiff fails to amend it within the time allowed by the court, and the defendant moves for such dismissal.

4. Court; with prejudice. By the Court, with prejudice to the cause, when upon the trial and before the final submission of the case, the plaintiff abandons it."

California Code of Civil Procedure, section 391, subdivision (b) (2):

A vexatious litigant is defined in C. C. P. 391(b) as a person:

"(2) Who, after a litigation has been finally determined against him, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of such determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues

of fact or law, determined or concluded by such final determination against the same defendant or defendants as to whom the litigation was finally determined." *

* This statute mandates security for costs. This Court's attention is invited to the inclusion of this statute in the written opinion, supra, of the Court below. Its inclusion is highly dubious and more so when the following is considered:

a. Invocation calls for a litigation that has been finally determined and not one which is not entitled to a final determination. Petitioner's attempts to vacate judgment brought it into the area of not entitled to a final determination; said attempts founded in California law.

b. Further, it mandates a propria persona status. Even when petitioner had an attorney file it after the attorney wrote the complaint, he was subjected to security and the above defamation of a vexatious litigant.

c. Further it mandates same defendant or defendants. Petitioner's attorneys' named new defendants. This did not stop the Superior Court of Los Angeles, who granted security to a defendant never named in a law suit. The high point of this perspective was when the 1st attorney and 3rd attorney in the case before this Court also invoked the statute -- and it was granted? The Court below has affirmed in part such questionable and unconstitutional decisions. Even the trial court, supra, could not believe it! Such are the deprivations suffered those in propria persona in the state of California.